

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Crim. No. 06-102(FSH)
v. :
ARTURO FOLSTON : REPORT & RECOMMENDATION

This matter having come before the Court by way of referral from the Hon. Faith S. Hochberg to conduct a proceeding pursuant to Fed. R. Crim. P. 11 and to issue a report and recommendation regarding the defendant's entry of a guilty plea; and the Court having considered the written consent by the defendant and his counsel to have the proceeding before the Undersigned; and the Undersigned having conducted a proceeding pursuant to Fed. R. Crim. P. 11; and as more fully set forth and reflected in the transcript of proceedings dated October 23, 2006, the Court makes the following report:

1. The defendant consented to the entry of a guilty plea before a United States Magistrate Judge, subject to his ability to file any written objections to the findings and recommendations contained in this report and orally stated at the Rule 11 proceeding and subject to its adoption by the United States District Judge;

2. The defendant fully understood the oath and consequences of failing to tell the truth at the plea hearing;

3. The defendant fully understood the nature of the charges and the consequences of his guilty plea, including the maximum penalties that he faces;

4. The defendant fully understood that while the United States Sentencing Guidelines are not binding, they will be considered;

5. The defendant fully understood his right to plead "not guilty" and to be tried by a jury,

with the assistance of counsel, and that he would have the right to confront and cross-examine witnesses, call witnesses and compel the production of evidence if he so chooses, and to remain silent or testify, if he so chooses;

6. The defendant fully understood that if the guilty plea is accepted, then there would be no trial in this case;

7. The defendant was fully competent and capable of entering an informed guilty plea;

8. The defendant's waiver of his right to file an appeal and a post-conviction challenge, and his plea were free, knowing, and voluntary; and

9. There is a factual basis to support the plea of guilty.

Based upon the foregoing, and based upon the transcript of the proceedings, it is on this 23rd day of October, 2006, recommended to the United States District Judge that the defendant's plea of guilty be accepted and that a judgment of guilt to Count III of the Superseding Indictment be entered.

Respectfully,

s/Patty Shwartz
United States Magistrate Judge

NOTICE

FAILURE TO FILE WRITTEN OBJECTIONS TO THE FINDINGS AND RECOMMENDATIONS CONTAINED IN THE FOREGOING REPORT, WITHIN TEN DAYS OF RECEIPT OF SAME, MAY BAR DE NOVO DETERMINATION BY THE UNITED STATES DISTRICT JUDGE OF AN ISSUE COVERED HEREIN AND SHALL BAR APPELLATE REVIEW OF SUCH FACTUAL FINDINGS AS MAY BE ACCEPTED OR ADOPTED BY THE UNITED STATES DISTRICT JUDGE.